

IN THE HIGH COURT OF THE FEDERAL CAPITAL TERRITORY
IN THE ABUJA JUDICIAL DIVISION
HOLDEN AT MAITAMA

BEFORE HIS LORDSHIP : HON. JUSTICE Y. HALILU
COURT CLERKS : JANET O. ODAH & ORS
COURT NUMBER : HIGH COURT NO. 13
CASE NUMBER : CHARGE NO: CR/841/2024
DATE: : THURSDAY 7TH NOVEMBER, 2024

BETWEEN:

FEDERAL REPUBLIC OF NIGERIA } **COMPLAINANT/
RESPONDENT**

AND

OKOYE FAVOUR CHEKWUBE } **DEFENDANT/
APPLICANT**

RULING

This Ruling is at the instance of the Bail application moved by Defendant/Applicant vide Motion on Notice dated 4th day of November, 2024 and filed the 5th November, 2024 praying the Court for the following:-

1. An Order admitting the Defendant/Applicant to bail pending the determination of this Trial.
2. An Order admitting the Defendant/Applicant to bail on the most liberal terms particularly on the existing administrative bail granted by the Economic and Financial Crimes Commission.
3. And for such further Order(s) as this Honourable Court may deem fit to make in the circumstances.

In support of the application is an 8 paragraph affidavit deposed to by Nnamdi C.B. Akuneto, the lawyer representing the Defendant/ Applicant in this Charge. It is the deposition of the Defendant/ Applicant, that the Defendant/Applicant was served with a one (1) Count Charge on the 1st day of November, 2024

and dated the 14th day of October, 2024 but filed on the 15th day of October, 2024.

That the said Charge bothered on alleged offence of obtaining by false pretence which is bailable offence, and that at the point of investigation, the Defendant/Applicant was very cooperative during and after investigation by the Commission, and that Defendant/ Applicant was granted administrative bail by the Economic and Financial Crimes Commission thereafter and was required to report at the Commission on weekly basis, during the Administrative bail period.

That the Defendant/Applicant will not in any way interfere with the investigation or prosecution by the Complainant in any way, and that he knows as a fact that the Defendant/Applicant will not jump bail as he is responsible for the day to day running of the aged father's business and he has also provided reasonable and substantial surety prior to his grant of administrative bail at the Economic and Financial Crimes Commission.

That he knows as a fact that the Defendant/Applicant's father is suffering from severe diabetes and hypertension and he is being taken care of by the Defendant/Applicant. That it will be in the interest of justice to grant the instant application especially as the

offences in which the Defendant/Applicant is standing trial is a bailable offence and the Defendant/Applicant have no record of previous conviction.

That the Complainant/Respondent will not be prejudiced by the grant of this application in any way.

In line with law and procedure, Defendant/Applicant filed written address, wherein sole issue was formulated for determination to-wit;

Whether the Defendant/Applicant should be granted bail after arraignment before this Honourable Court by the Complainant pending the determination of the charge against him.

It is the submission of learned counsel, that the presumption of innocence under Section 36(5) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) is very fundamental in all ramifications. It is to avoid a situation whereby an accused person is kept in custody pending trial only to discover at the end of the trial that the accused person(s) is innocent of the offence as charged. The Supreme Court of Nigeria in the locus classicus case of ***SAIDU VS. STATE (1982) 4SC page 42@67- 70*** was cited.

Learned counsel contends, that in an application for bail, the greatest power of this Honourable Court is rooted in the doctrine of discretion. Discretion is the power of the Court which is not hampered by the rule of stare decisis. It is the power of the court according to the dictates of this Court conscience which is to be applied judicially and judiciously especially considering the behavior of the Defendant/Applicant, the health and medical condition of the Defendant/Applicant's aged father and also considering that the Defendant/Applicant never jumped bail during his administrative bail by the Commission as he was regularly reporting at the Economic and Financial Crime Commission after the grant of his administrative bail. The Defendant/Applicant reported regularly as scheduled every week without jumping bail even when he had the opportunity to so do.

Learned counsel further submits, that for the purpose of emphasis, the essence and fundamental of bail is to ensure the presence of the accused persons at his trial. The Defendant/Applicant has demonstrated his willingness to face his trial. The Supreme Court in ***DOKUBO ASARI VS. FRN (2007) ALL FWLR part 375 page 588*** was cited.

Learned counsel argued, that the court has been enjoined to treat the issue of bail on its merit without resorting to extraneous materials or being technical as it will amount to unfairness and injurious to the notion of justice for a constitutionally presumed innocence men to lose their freedom merely because an unproven charge is preferred against them.

Counsel also submits, that the offence for which the Defendant/Applicant is being charged is bailable not being a capital offence. Counsel refer to Sections 158 and 162 of ACJA.

It is therefore, now settled that conditions for bail must not be unreasonable or oppressive, as such conditions in effect may amount to a refusal.

Learned counsel further contends, that it is trite that at the point of an application for bail pending trial, it is not the duty of the Defendant/Applicant to prove his innocence or guilt. These are extraneous issues at this time of the proceedings. The essence of bail is availability of the Accused for the trial. The case of ***OMOLARA VS. STATE (2004)1NWLR Part 853 page 80 @89-90 paragraph F-A*** was cited.

Learned counsel submits, that from the materials placed before the Court from the supporting affidavit in support of this

application, the medical report of the Defendant/Applicant's father and the fact that the Defendant/Applicant has always reported at the Economic and Financial Crime Commission during the enjoyment of his administrative bail counsel urge this Honorable Court to grant the Defendant/Applicant bail in most liberal terms. There is also no record of previous conviction against the Defendant/Applicant. He has demonstrated also that upon grant of bail, he will not jump bail.

Counsel concludes by urging the Court to grant this application in the interest of justice. Counsel further urge this Court to do so on liberal terms as the Defendant/Applicant has no reason to escape justice.

COURT:-

I have considered the said application seeking the Bail of the Defendant/Applicant which is uncontested.

Bail is both a constitutional right and contractual between an Accused and the Court once granted by a Court of law. Constitutional right because the accused person is presumed innocent until his guilt is established as provided for under **Section 36(5) of the 1999 Constitution of Federal Republic of Nigeria.**

The essence of Bail is not to set an accused person free but to release him from custody of the law and to entrust him to appear at his trial at a given date. It is therefore to grant such an accused person a pre-judicial freedom whose appearances can be compelled by ensuring a credible surety takes him on Bail and undertakes to produce him in Court. Above was stated by Tobi, JSC, (as he then was), in the case of ***SULEIMAN & ANOR VS. C.O.P (3126) (SC)***.

The law is equally established that Section 36(5) of the 1999 Constitution as amended is in favour of an Accused person in view of the fact that his guilt must be established for him to be deprived the entitlement to his Fundamental Human Rights to Freedom of Movement etcetera as enshrined in the Constitution, i.e Chapter IV of the Constitution.

I have listened to learned counsel for the Defendant/Applicant on the one hand, and the reaction of learned counsel for the Prosecution who clearly is unopposed to the grant of the application. Please note that once an accused is arraigned before a Court of law and pleads to a charge, it pre-supposes that investigation has been conclusively carried-out. On the other hand, where investigation is ongoing, the Complainant naturally

would have approached the Court for a remand Order which will afford them the opportunity to keep such Accused person for 14 days or more once extended by the same Court. The argument therefore that investigation is ongoing can therefore not be tenable.

It is similarly true that the criminal record of an Accused person is often taken into account and the likelihood of such an accused person jumping bail and thereby escaping justice. Of the conditions, the most important is the availability of the Defendant to stand trial. This of course underscores the issue of sureties who must be credible.

Our legendary Prof. of Law, Ben Nwabueze, SAN, a text book writer lent his voice on the significance of Human Rights which he opined that these rights are already possessed and enjoyed by individuals and that the *"Bills of Rights"* as we know them today *"created no right de-novo but declared and preserved already existing rights, which they extended against the legislature."*

The charge before this Court reveal offences that are Bailable. Courts have granted bail to Accused person who was arraigned for Treason.

See ***ABIOLA VS. FRN (1995) 1 NWLR (Pt. 155) (CA);***

DOKUBO VS. FRN (2007) LPELR (Pt. 958) (SC).

I am minded on the strength of all I have said therefore to grant the Accused person bail. I hereby grant Accused person Bail on the following terms and conditions:

1. Accused person shall produce two (2) sureties who must be Civil Servants in the Federal Civil Service and not below the Rank of Director who must provide evidence of First Employment and Last promotion.
2. The Surety shall also write undertaking to produce the Accused person in Court throughout the hearing and shall be put in detention in the event that Defendant/Applicant jumps bail.
3. Accused person must write an undertaking to be of good behaviour throughout their trial/bail and risk having same revoked.

***Justice Y. Halilu
Hon. Justice
7th November, 2024***

APPEARANCES

Mariam A.A., Esq. – for Prosecution.

Layi A., Esq. with Nnamdi C.B.A., Esq. for Defendant.